IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.65 of 2006

Neha Nandkumar Patkar — Petitioner

Vs.

Vasant Dada Patil Shikshan Sanstha
and ors. — Respondents

Mr.S.M.Oak for petitioner.

Mr.A.G.Kothari for Resp.no.1.

Mr.Mandar Limaye h/f. Mr.R.S.Apte for Resp.no.3.

Mr.N.V.Bandiwadekar for Resp.no.4.

CORAM: B.H.MARLAPALLE,J.

August 30, 2006.

P.C.

1. This petition was listed for orders today for the ad-interim relief being confirmed or vacated after the petition was admitted as per the order dated 16/8/2006. All the respondents have appeared and the respondent nos.1 and 2 in addition to the affidavit-in-reply have also placed on record compilation of documents filed before the School

Tribunal in Appeal No.14 of 2005 which was filed by the present respondent no.4 and was allowed as per the impugned order dated 21/12/2005. After hearing the learned counsel for the respective parties, the petition is being disposed off finally.

2. The appellant had contended before the School Tribunal that in response to the advertisements released by the management on 22nd April 2005 and 27th April 2005 in some of the leading newspapers like Loksatta and Maharashtra Times for the post of Head Mistress, she had submitted her application and was subsequently interviewed. By an order dated 2nd May 2005 she was appointed as the Head Mistress of the Primary School i.e. Shrinagar Vidyamandir (Primary), Wagle Estate, Thane run by Vasant Dada Patil Shikshan Sanstha, Bhandup, Mumbai and she joined the said post on 5th May 2005. She had passed her D.Ed. examination in April 1991 and when she applied for the post of Head Mistress she had about 14 years of experience or in any case more than five years of experience as an Assistant Teacher in a Primary School and she was thus eligible. The appeal was opposed by the management i.e. Respondent Nos.1 and 2 by filing written statement and the present

petitioner who was impleaded as Respondent no.4 in the appeal had also filed an affidavit-in-reply contending therein that it was she who was required to be continued as Head Mistress being the seniormost Assistant Teacher and her resignation was obtained / accepted forcibly and the said act on the part of the management was illegal. The School Tribunal after hearing all the concerned parties and on perusal of the documents placed on record set aside the order of termination of the appellant (present respondent no.4) dated 26/7/2005 which was sought to be made effective from 9/8/2005. It is not disputed that by an order dated 8/8/2005 the appellant was granted interim relief staying the order of termination and, therefore, it ought to be presumed that she continued to hold the post of Head Mistress. The School Tribunal noted that the termination order impugned in the appeal and dated 26/7/2005 was solely on account of the fact that the respondent no.3 - Education Officer issued a letter bearing Outward No.404/2005 directing the reinstatement of the respondent no.4 i.e. the present petitioner. Obviously the said power was not vested with the Education Officer.

3. While granting Rule in this petition the

ad-interim relief granted earlier was continued and the ad-interim order granted by the order dated 10/2/2006 by this Court was to maintain status quo which clearly indicated that the original appellant and the present respondent no.4 continued to hold the post of Head Mistress in view of the ad-interim order granted by the Tribunal on 8/8/2005. The contention of Mr.Oak, the learned counsel for the petitioner that the petitioner continued to hold the post of Head Mistress as at present cannot be accepted.

4. Now coming to the appeal filed by the present respondent no.4 regarding her proposed termination of service as per the order dated 26/7/2005 is concerned, it is necessary to examine the scheme of the MEPS Rules, 1981 and more particularly for the appointment of Head Master / Head Mistress in the primary schools. Rule 3(1) of the MEPS Rules states that a person to be appointed as the Head having enrolment of students above 200 or having Standards I to VII shall be the seniormost trained teacher who has put in not less than five years' service. Undoubtedly, the respondent - school has more than 200 students and, therefore, on the resignation of the present petitioner having been accepted, it was

necessary for the management to offer the post of Head Mistress to the seniormost trained teacher who had put in five years or more service in the said school and the management contends that to discharge this responsibility it called upon, to begin with, Mrs.Pramila Gaikar to accept the post of Head Mistress and there was no response inspite of even a written letter sent by registered A.D. Subsequent to the letter dated 31st Mach 2005, it was further submitted that again on 4th April 2005 and also on 8th April 2005 the letters were addressed to the other eligible Assistant Teachers calling upon them to indicate their consent for accepting the post of Head Mistress and as there was no response the management had no alternative but to release an advertisement for the post of Head Mistress and the same was accordingly done and published in the local newspapers as referred to hereinabove on 22nd and 27th April 2005. This act even if accepted to be bona fide, does not meet the requirements of Rules and particularly Rule 3 of the MEPS Rules, 1981. The explanation provided below Rule 3 states that the vacancy of Head shall be communicated by the management to the seniormost qualified teacher having satisfactory record of service and ask him/her to

submit his/her willingness for appointment to the said post within 15 days from the date of receipt of the communication. The claim of the seniormost qualified teacher having satisfactory record of service for appointment to the post of the Head Mistress may be disregarded only if he/she on his/her own free will gives a statement in writing to the Education Officer that he/she has voluntarily relinquished his/her claim to the post. In the event the teacher failing to submit his / her willingness for appointment to the post to give statement to the Education Officer within a period of 15 days, it shall be assumed that he/she has relinquished his/her claim on the said post. In the instant case even if it is presumed and without accepting for the time being, that the management addressed letters to Mrs.Pramila Gaikar on 31st March and 4th April 2005 and there was no response, it was necessary for the management to bring this issue to the notice of the Education Officer i.e. Respondent no.3 who in turn could have called upon the said seniormost teacher and recorded her statement. In turn if Mrs.Gaikar had refused or declined the post of Head Mistress, the post could have been offered to the next seniormost teacher by the management and the

Education Officer. Instead of doing this exercise, the management appears to have addressed letters directly to all the eligible teachers that too calling upon them to submit their willingness to the post of In-charge Head Mistress.

5. Mr.Bandiwadekar, the learned counsel for the respondent no.4 - original appellant has also placed reliance on the communication dated 13/4/2005 submitted to the respondent no.3 and signed by all the seventeen teachers indicating that they were not willing to accept the post of Head Mistress and that Mrs. Neha Patkar, the present petitioner was illegally removed from the post of Head Mistress by accepting her resignation under force / duress. Such a communication cannot be accepted and in fact to begin with it was necessary for the management to get the statement of Mrs.Gaikar recorded before the Education Officer indicating her unwillingness to accept the post of Head Mistress. It has been further claimed in the appeal before the School Tribunal that the respondent no.4 did not fulfil the age criteria when she was appointed to the post of Head Mistress. However, it is not necessary to consider this issue more so when it is clear that the

appointment of the respondent no.4 - the original appellant to the post of Head Mistress was not in keeping with the requirement of Rule 3 of the MEPS Rules, 1981 and, therefore, there was no reason for the School Tribunal to interfere with the termination order dated 26/7/2005 inspite of the fact that the said termination was at the instance of the Education Officer who had no authority in law to reinstate the present petitioner. Resultantly Appeal No.14 of 2005 must fail.

6. If the present petitioner has any grievance against the management in regard to her resignation having been accepted forcibly, under duress or illegally, it was necessary for her to agitate all these contentions in an appeal by her under Section 9 of the MEPS Act, 1977 and it was not permissible for the School Tribunal to consider the said issues in Appeal No.14 of 2005 filed by the present respondent no.4 challenging the order of termination dated 26/7/2005. Such a remedy is still available to the petitioner and obviously she will have to initially pray for condonation of delay in moving such an appeal if and when she decides to do so. But subject to any appeal that the present petitioner may file, the management is required to fill in the post of

Head Mistress by following the provisions of Rule 3 of the MEPS Rules, 1981 and undoubtedly the post must be offered to the seniormost eligible teacher. This exercise will have to be completed at the earliest possible and in consultation with the respondent no.3. It is made clear that respondent no.3 is a statutory authority and he must extend timely advice as well as assistance to the management rather than sitting over the papers.

7. In the premises the petition is dismissed. At the same time Appeal No.14 of 2005 also stands dismissed. The Respondent nos.1 and 2 (Respondent no.2 is represented through an Administrator as at present) shall jointly initiate the steps to fill in the post of Head Mistress by following the requirements of Rule 3 of the MEPS Rules, 1981 and the said post shall be filled in within two weeks from today. Needless to mention the Administrator shall ensure that the seniormost teacher is appointed as an In-charge Head Mistress during the intervening period forthwith. Respondent no.3 is hereby directed to consider the absorption of respondent no.4 in any available vacancy in an aided primary school under his jurisdiction at the earliest possible and she

shall be kept on the waiting list as a surplus teacher as per the Rules. It is made clear that this order will not come in the way of the present petitioner to get her appeal decided on its own merits.

(B.H.MARLAPALLE,J.)